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Din bin Yahaya v Public Prosecutor

SUPREME COURT (KUALA LUMPUR) — CRIMINAL APPEAL NO 05-79-89
ABDUL HAMID OMAR LP, MOHAMED AZMI SCJ AND EUSOFF CHIN J
B 25 NOVEMBER 1991

Evidence *— Cautioned statement — Admissibility — Whether caution administered in full — Dangerous Drugs Act 1952 s 37A(1)(b)*

Evidence *— Cautioned statement — Malay version — Omission of comma after word*
C *'tidak' — Meaning rendered by caution*

Words and Phrases *— 'Words to the like effect' — Dangerous Drugs Act 1952 s 37A(1)(b)*

D The appellant had been convicted for the offence of trafficking in a dangerous drug and sentenced to death. At the trial two cautioned statements of the appellant were submitted in evidence and admitted. On appeal it was argued that the caution administered to the appellant before he gave his statement was defective because it did not follow the wording in s 37A(1)(b) of the Dangerous Drugs Act 1952
E ('the Act'), and also because there was no comma after the words 'atau tidak'.

Held, dismissing the appeal:

(1) The words 'words to the like effect' in s 37A(1)(b) of the Act
F means that the caution prescribed must be administered in full, although it is not essential that it must be in exactly the precise form prescribed by the section. It is the whole effect and intention of the caution which must be looked at, and not merely the actual words used.

(2) Although the words used by the recording officer in this case are
G not precisely as those prescribed by s 37A(1)(b) of the Act, they are words having the like effect on the accused and therefore the caution was administered in full and in compliance with the requirements of the law.

(3) The Malay version of the caution, even without the comma after
H the word 'tidak', would still be capable of giving only one meaning which is that anything said may be given in evidence notwithstanding that what is said is in answer to a question or not.

[Bahasa Malaysia summary

I Perayu telah disabitkan bagi kesalahan mengedar dadah berbahaya dan dihukum mati. Di perbicaraannya dua pernyataan beramarannya telah dikemukakan sebagai keterangan dan diterima. Apabila rayuan dibuat telah dihujahkan bahawa amaran yang diberi kepada perayu sebelum ia membuat pernyataan itu adalah cacat oleh kerana ia tidak mengikut penyusunan kata-kata di dalam s 37A(1)(b) Akta Dadah

Berbahaya 1952 dan juga kerana tidak terdapat koma selepas perkataan 'atau tidak'. A

Diputuskan, menolak rayuan itu:

(1) Perkataan 'perkataan memberi kesan yang sama' di dalam s 37A(1)(b) Akta itu bermakna amaran yang diperuntukkan hendaklah diberi sepenuhnya, sungguhpun tidaklah penting bahawa ia semestinya di dalam bentuk yang sama seperti yang diperuntukkan di dalam seksyen itu. Yang harus dipandang ialah kesan keseluruhannya dan niat amaran itu, bukan hanya perkataan yang sebenarnya yang digunakan. B

(2) Sungguhpun perkataan-perkataan yang digunakan oleh pegawai yang mencatat pernyataan itu di dalam kes ini tidak mengikut dengan tepatnya apa yang diperuntukkan oleh s 37A(1)(b) Akta itu, perkataan yang digunakan itu adalah perkataan yang memberi kesan yang sama kepada orang yang dituduh dan oleh kerana itu amaran itu telah diberi sepenuhnya dan mengikut kehendak undang-undang.] C D

Cases referred to

1 *PP v Kamde bin Raspani* [1988] 3 MLJ 289 (refd)
2 *PP v Lee Chee Meng* [1991] 1 MLJ 226 (refd)
3 *Push v Ashutosh Shen* AIR 1929 PC 69 (refd) E

Legislation referred to

Dangerous Drugs Act 1952 s 37A(1), (b)

Appeal from: Criminal Case No 47(58)–38–84 (High Court, Penang) F

Karpal Singh (*V Sithambaram* with him) (*Karpal Singh & Co*) for the appellant.

Dato' Stanley Isaac (Senior Federal Counsel) for the respondent.

Cur Adv Vult G

Eusoff Chin J (delivering the judgment of the court): On 20 August 1991 we dismissed this appeal and indicated that we will give our reasons why the two cautioned statements made by the appellant under s 37A(1) of the Dangerous Drugs Act 1952 were properly admitted by the learned trial judge. H

The appellant was charged with trafficking in cannabis weighing 439.6g. He was tried, found guilty, convicted and sentenced to death on 21 August 1989 by the Penang High Court under s 39B(2) of the Dangerous Drugs Act 1952. I

At the trial in the High Court, the prosecution tendered two cautioned statements of the appellant given under s 37A(1) of the Dangerous Drugs Act 1952 which were admitted in evidence by the learned trial judge. Learned counsel for the appellant, Encik Karpal Singh, submitted that on

each of the two occasions, the caution administered to the appellant before the appellant gave his statement was defective because it did not follow the wording in s 37A(1)(b) of the Act, and also because there was no comma after the words 'atau tidak' and citing *PP v Kamde bin Raspani*,[1] and *PP v Lee Chee Meng*,[2] he said that the cautions were not properly administered to the appellant. On each occasion the caution as typed in the form in which the cautioned statement was recorded, was worded as follows:

> Adalah kewajipan saya memberi tahu kepada kamu bahawa kamu tidak di paksa berkata apa apa atau menjawap apa apa soalan, tetapi apa jua yang kamu katakan samada bagi menjawap apa soalan atau tidak maka boleh di gunakan sebagai keterangan.

Encik Karpal Singh said that because the comma after the words 'atau tidak' was not inserted, the caution was capable of two meanings, ie either that what the accused said could be used in evidence or that it could not be used in evidence against him as was held in the two cases cited by him.

In each of those two cases the learned judges did not quote in their judgments what the words used in the caution which was administered to the accused by the police officer before he recorded the statement from the accused were. We are therefore unable to make any observation on those judgments. The learned judges also found that the statements were not made voluntarily by the accused and rejected them.

The proviso in s 37A(1)(b) of the Dangerous Drugs Act 1952 states:

> Provided that no such statement shall be admissible in evidence ...
> (b) in the case of a statement made by such person after his arrest, unless the Court is satisfied that a caution was administered to him in the following words or *words to the like effect* —
>
> 'It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say whether in answer to a question or not, may be given in evidence' (Emphasis added.)

There is no Malay version of this Act, but the Malay version of the caution as translated by the Lembaga Penyelidikan Undang-Undang is:

> Adalah menjadi kewajipan saya untuk memberi amaran kepada kamu bahawa kamu tidaklah diwajibkan menyatakan sesuatu atau menjawab apa-apa soalan, tetapi apa-apa jua yang kamu nyatakan, samada sebagai menjawab sesuatu soalan atau tidak, boleh diberi sebagai keterangan.

The warning part in the caution is that part up to the first comma, while the remaining part merely indicates the use to which the statement, if given, may be put. The words 'words to the like effect' in s 37A(1)(b) of the Act means that the caution prescribed must be administered in full, although it is not essential that it must be in exactly the precise form prescribed by that section. It is the whole effect and intention of the caution which must be looked at, and not merely the actual words used.

In this appeal, the caution administered by the recording officer did not contain the precise words in Malay as that translated by the Lembaga Penyelidikan Undang-Undang. The recording officer had himself translated into Malay the caution, and administered it to the appellant. The words used by him in the caution had the same effect and intention as those

prescribed in s 37(1)(b) of the Act. The words which he used 'Adalah kewajipan saya memberi tahu kamu bahawa kamu tidak dipaksa berkata apa-apa atau menjawab apa-apa soalan', contained the necessary warning to the appellant, and the rest of the caution which is 'tetapi apa jua yang kamu katakan samada bagi menjawab apa soalan atau tidak maka boleh digunakan sebagai keterangan' was merely to indicate to the accused the use to which the statement may be put. The recording officer asked the appellant: 'adakah kamu faham akan maksud amaran di atas?' and the appellant replied: 'ya, saya faham.'

We are, of the view that although the words used by the recording officer are not precisely as those prescribed by s 37A(1)(b) of the Act, they are words having the like effect on the accused and we therefore hold that the caution administered was in full, and in compliance with the requirements of the law.

As regards the omission of the second comma after the word 'tidak', this does not in our view give rise to two meanings as suggested by Encik Karpal Singh. The word 'tidak' is followed by the word 'maka', and 'maka' is always used at the beginning of a clause or phrase so that any one reading the caution has to pause before the word 'maka'. Even without the word 'maka', a person reading the caution grammatically would still menifestly be required to pause after the word 'tidak' because the words 'samada bagi menjawab apa soalan atau tidak' is a clause in the sentence constituting the caution.

Similarly, looking at the sentence from a purely grammatical point of view, the Malay version of the caution as translated by the Lembaga Penyelidikan Undang-Undang, even without the comma after the word 'tidak', would still be capable of giving only one meaning which is that anything said may be given in evidence notwithstanding that what is said is in answer to a question or not. Their Lordships of the Privy Council in *Push v Ashutosh Sen* at p 71 observed:

> The truth is that, if the Article is read without the commas inserted in the print, as a court of law is bound to do, the meaning is reasonably clear.

For the reasons given, we find that the learned judge had correctly admitted the two cautioned statements in evidence at the trial of the appellant.

Appeal dismissed.

Reported by Prof Ahmad Ibrahim